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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

DELPHI CORPORATION, et. al.,

Debtors

Case No. 05-44481 (RDD)

Chapter 11

(Jointly Administered)

**RESPONSE TO DEBTORS' FIFTEENTH
OMNIBUS CLAIMS OBJECTION
(SUBSTANTIVE) PURSUANT TO 11
U.S.C. § 502(b) AND FED. R. BANKR. P.
3007 TO CERTAIN (A)
INSUFFICIENTLY DOCUMENTED
CLAIMS, (B) CLAIMS NOT
REFLECTED ON DEBTORS' BOOKS
AND RECORDS, (C) UNTIMELY
CLAIMS AND UNTIMELY TAX CLAIM,
AND (D) CLAIMS SUBJECT TO
MODIFICATION, TAX CLAIMS
SUBJECT TO MODIFICATION, AND
MODIFIED CLAIMS ASSERTING
RECLAMATION**

**Claimant: The Brix Group, Inc.
Claim Numbers 8139 and 8229**

1 The Brix Group, Inc. ("Claimant") hereby submits this Response to Fifteenth Omnibus
2 Claims filed by Delphi Corporation and certain of its subsidiaries and affiliates, debtors and
3 debtors-in-possession ("Delphi") in support of Claim Number 8139 in the amount of \$44,754 and
4 Claim Number 8229 in the amount of \$2,896,591.72.

5 On June 19, 2006, The Brix Group, Inc. filed claim number 8139 in the amount of \$44,754
6 ("Claim No. 8139). On June 19, 2006, The Brix Group, Inc. filed claim number 8229 in the
7 amount of \$2,896,591.72. For the reasons set forth below, Claimant believes Claim No. 8139 and
8 Claim No. 8229 should not be disallowed and expunged and should be allowed in the respective
9 amounts as filed. The relevant documentation, including but not limited to the Representative
10 Agreement(s) and the Distribution Agreement(s) and their corresponding exhibits, as described
11 below, are attached to Claim No. 8139 and Claim No. 8229.

12 **I. History and Background of Claim No. 8139 and Claim No. 8229:**

13 In March 2002 at the Mid American Truck show in Louisville, Kentucky John Trenberth,
14 President of Pana-Pacific, a division of The Brix Group, Inc met Steve Hartwood, division
15 president of Delphi. Mr. Trenberth and Mr. Hartwood had some congenial conversations about
16 their company's experiences supplying the truck channel with products. Pana-Pacific has a very
17 good reputation in the trucking industry as a great supplier of electronics including radios,
18 speakers, antennas, inverters etc. This meeting resulted in a series of follow-up communications
19 between Mr. Trenberth and Mr. Hartwood. These subsequent conversations resulted in an
20 invitation from Delphi for Harry Brix, Chairman, and John Trenberth to travel to Kokomo, Indiana
21 in the summer of 2002 for a meeting with Delphi about the possibility of doing business together.

22 An initial meeting took place in the summer of 2002 at Delphi's offices in Kokomo
23 Indiana with Harry Brix and John Trenberth of The Brix Group, Inc, Steve Hartwood and Beth
24 Swarting of Delphi and Satchel Gidwani of MobileAria, a wholly owned subsidiary of Delphi, in
25 attendance. A number of business opportunities were discussed and a presentation was given by
26 Delphi and MobileAria personnel about the "Truck PC" project.

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1 The Truck PC project was a project Delphi and MobileAria were working on to provide a
2 system to be installed in trucks which would perform a number of functions including monitoring
3 speed, location, fuel consumption, engine performance etc. and relay that information to the
4 truck's operations/dispatch office via wireless communication. At that meeting Harry Brix and
5 John Trenberth of The Brix Group, Inc. were told that the product was complete and ready for
6 market and that in fact 4,400 units of the product had already been sold. Delphi indicated that they
7 were considering providing Pana-Pacific the opportunity to be a supplier of the product to the
8 trucking channel and that if the parties were to come to an agreement they would look to Pana-
9 Pacific to develop and provide the components required for installation in trucks including wire
10 harnesses, modems etc. The Brix Group management specifically asked if the software developed
11 by MobileAria for the Truck PC integrated with existing fleet management systems already being
12 used by fleets to manage their trucks. In response, Delphi and MobileAria officials said that the
13 software integrated with existing systems.

14 The Distribution Agreement With Delphi

15 Discussions continued over the next several months between Delphi and The Brix Group,
16 Inc. These discussions contemplated the transfer of business from Delphi to The Brix Group, Inc.
17 Delphi had apparently determined that The Brix Group, Inc could more efficiently manage
18 distribution of their products to the commercial vehicle market than they could. Effective
19 December 19, 2002, the "DISTRIBUTION AGREEMENT" between Delphi Electronics
20 Corporation, a subsidiary of Delphi Corporation and The Brix Group, Inc. was signed. This
21 agreement was for a three year term and granted The Brix Group, Inc exclusivity in the
22 distribution of certain Delphi Electronics Corporation's products in specified markets. It also
23 transferred responsibility for fulfilling Delphi Electronics Corporation's sales contracts
24 (transferred business) which were already in effect as of the effective date. These sales contracts
25 only produced 5% to 7% margins. Additionally, Delphi promised to release for sale new products
26 which would generate approximately \$750,000 per month in sales and over \$100,000 in gross
27 profit to offset the losses expected from the transferred sales. The DISTRIBUTION
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1 AGREEMENT also included a number of "EXHIBITS" which specified the following:

- 2 • Exclusive Products
- 3 • Non-exclusive products
- 4 • Conditions for maintenance of exclusivity
- 5 • Sales Incentives
- 6 • Warranty
- 7 • Trademark, Logo and service mark guidelines and;
- 8 • Cooperative advertising

9 The Sales Incentive bonus available to Pana-Pacific for 2003 applied only to "New
10 Business" over and above the business transferred to Pana-Pacific (even though this business was
11 transferred at very low margin, below that at which Pana-Pacific can operate its business) plus an
12 incentive on the sale of Truck PC units. This Sales Incentive would be earned by Pana-Pacific if
13 "New Business" sales exceeded \$30,000,000 and at least 6,500 TruckPC units were sold in 2003.

14 The only way Pana-Pacific would be profitable in 2003 operating under the
15 DISTRIBUTION AGREEMENT is if it could earn the "Sales Incentive" which was directly tied
16 to selling 6,500 TruckPCs. However, The Brix Group, had been told the Truck PC was complete,
17 ready for sale and that 4,400 units had already been sold. The Brix Group, Inc. was also told that
18 there was another deal with Freightliner pending and that both of these deals would qualify toward
19 the sales goal of 6,500 for the year. The Sales Incentive for 2003 was \$469,000. Margins were
20 supposed to be increased as new products were released for sale based upon representations made
21 by Delphi. However, no new products were released in 2003.

22 Pana-Pacific began performing under the DISTRIBUTION AGREEMENT in 2003 and
23 performed very well. Almost immediately upon signing the DISTRIBUTION AGREEMENT
24 Pana-Pacific began performing engineering services to support the installation of the TruckPC in
25 various models of trucks and began hiring a sales staff early in 2003 (before any agreement existed
26 to be compensated by MobileAria for telematics sales) dedicated to selling the TruckPC unit to
27 OEMs and fleets. This staff consisted of a manager, well regarded in the trucking industry, and
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1 two account managers. These people were kept on staff through most of 2005 in support of the
2 company's efforts to develop the market for the TruckPC. This sales team developed sales
3 programs, produced sales collateral, made sales presentations and performed demonstrations to
4 truck fleet operators nationwide. Pana-Pacific incurred a total cost of at least \$750,000 in direct
5 costs for this sales team and sales program development over the three year period in addition to
6 the engineering costs incurred to develop all of the installation applications and hardware for the
7 TruckPC.

8 As the Pana-Pacific sales and marketing staff began development of the TruckPC sales
9 program, they discovered that the TruckPC did not perform as Pana-Pacific had been led to
10 believe. Among the things Pana-Pacific learned were:

- 11
- 12 • There were serious issues with the software. The TruckPC units had to be sent back to
- 13 Delphi to have updated software loaded into the units on several occasions.
- 14 • The software did not interface with existing fleet management systems. Fleets that had
- 15 invested in Fleet Management systems (almost all large fleets have) realized that the
- 16 purchase and implementation of the TruckPC would make obsolete the systems they
- 17 currently had employed, creating a significant barrier to entry.
- 18 • No deals were ever forthcoming for the sale of the 4,400 units as promised and no sales
- 19 were pending at Freightliner.

20 As contemplated in the DISTRIBUTION AGREEMENT, Delphi did transfer business to
21 Pana-Pacific throughout 2003. Pana-Pacific executed very well delivering approximately \$20
22 million in new business to Delphi but had very little success selling the Truck PC and earned no
23 incentive. However, the new products which were to be released for sale in 2003 were delivered
24 by Delphi months after they had been promised, costing The Brix Group, Inc. approximately
25 \$2,500,000 in lost gross sales and over \$350,000 in lost gross profit.

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1 The Representative Agreement

2 Effective October 7, 2003, the "REPRESENTATIVE AGREEMENT" between MobileAria,
3 Inc (a wholly owned subsidiary of Delphi) and The Brix Group, Inc. dba Pana-Pacific was signed.
4 This agreement was for a three year period and specified the terms under which The Brix Group,
5 Inc would market and support MobileAria's services. MobileAria developed the telematics
6 software services to be used in conjunction with the TruckPC. Functionality of the TruckPC was
7 dependent upon the software developed by MobileAria to perform. The representative agreement
8 also included several "EXHIBITS" which specified the following:

- 9
- 10 • Company Services & Pricing (MobileAria's)
 - 11 • Commissions, Volume Commitments and Resource Commitments
 - 12 • Roles and Responsibilities
 - 13 • House Accounts and Special Accounts

14 Exhibit C of the REPRESENTATIVE AGREEMENT specified the roles and
15 responsibilities to be discharged by three parties, Delphi, MobileAria and Pana-Pacific. Further,
16 Exhibit F of the REPRESENTATIVE AGREEMENT specifically made reference to a house
17 account; BP and a Special Account; Airgas, Inc. Sales to these House and Special Accounts
18 qualified towards the sales quota but would earn no commissions on "telematics" sales because
19 these accounts had been sold by Delphi and MobileAria.

20 In September of 2004, a meeting was scheduled by Delphi and MobileAria to discuss the
21 TruckPC project. The meeting was held at MobileAria in Mountain View, California. Beth
22 Swarting, Vice President of Sales & Marketing Delphi and Dan Salmons, Director of North
23 American Sales, Delphi, Sachael Gidwani, President MobileAria, Adam Wegee and Dan Jester of
24 Mobile Aria and Harry Brix, John Trenberth, Derik Toy and Debbie Cameron of The Brix Group,
25 Inc were present. In this meeting Delphi said that they had finally received a commitment from
26 Airgas, Inc. to test the TruckPC in 3,000 trucks and that Pana-Pacific needed to purchase all of the
27 peripherals required to support its installation in these trucks. Pana-Pacific was directed to
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1 contract with a company called Velociti to perform the installations. Pana-Pacific was also told
2 that the sales would be paid for by GreatAmerica Leasing Corporation under a lease between
3 Airgas, Inc. and GreatAmerica Leasing Corporation, guaranteed by Delphi.

4 During the meeting in September 2004, representatives from The Brix Group, Inc. pointed
5 out that there were numerous problems with the TruckPC such as software glitches, lack of
6 interface with fleet management systems and that to date all of the tests performed by numerous
7 fleet operators such as Churchill, Roadway and PIE had failed to produce acceptable results and
8 that the companies testing the product had decided not to implement installation in their fleets.
9 Representatives from the Brix Group also pointed out that no commitment for the sale of 4,400
10 units had ever been forthcoming as promised. At that point, Mr. Sachael Gidwani, President of
11 MobileAria began waving in the air what he said was a contract for 4,400 units. The Brix Group
12 was never shown that contract.

13 Beth Swarting told The Brix Group that they needed to purchase all of the peripherals
14 required to complete the installations for Airgas and contract with Velociti to perform the
15 installations. She said that the 3,000 installations must be completed by December 31, 2004 and
16 that if we failed to perform Delphi would question our commitment to the program and that our
17 DISTRIBUTION AGREEMENT with Delphi would be jeopardized.

18 Based upon the reassurance that all of the problems with the TruckPC had been overcome
19 and the threats made relative to the DISTRIBUTION AGREEMENT, Brix Group management
20 committed to purchase all of the required peripherals and contract with Velociti for the
21 installations. The Brix Group, Inc contracted with Velociti as directed by Delphi and worked
22 diligently with Velociti to insure that coordination of the installations with Airgas, Inc. was
23 performed as well as possible and insured that all of the components required to perform the
24 installations were engineered, developed, produced (including unique mounting and installation
25 components) and that the TruckPC units and peripheral equipment required to perform all of the
26 installations were delivered to Velociti consistent with the schedule developed to complete the
27 installations by December 31, 2004.

1 As previously noted, Airgas, Inc was a "Special Account" as specified in the
2 "REPRESENTATIVE AGREEMENT" between MobileAria, Delphi and The Brix Group, Inc.
3 Airgas, Inc was reserved as a "Special Account" because the "sale" to this account was made by
4 MobileAria and Delphi. It was critical for the success of the TruckPC program that the product be
5 tested on a large scale. Airgas, Inc was convinced by Delphi to test the product but because it was
6 a "test" Airgas was unwilling to commit to either; purchase 3,000 TruckPCs or be solely obligated
7 on the lease for 3,000 units. Thus Delphi agreed to give Airgas the right to assign the
8 GreatAmerica lease to Delphi if in fact the test failed to produce the desired results. The lease
9 between Airgas, Inc and GreatAmerica Leasing included the provision that Airgas, Inc could
10 assign the lease to Delphi and Delphi was a signatory to the lease.

11 On May 10, 2005, GreatAmerica Leasing sent a letter addressed to Mr. Ted R. Schulte,
12 Division President, Airgas, Inc. advising him that based upon material changes in the credit profile
13 of Delphi Corporation ("Delphi") GreatAmerica Leasing would no longer accept Equipment
14 Schedules under the Master Lease for the TruckPC unless the right to assign the lease to Delphi
15 was removed. Airgas, Inc was unwilling to execute a new lease or an amendment to remove the
16 right to assign their obligation under the lease to Delphi because they were not convinced the
17 TruckPC worked.

18 GreatAmerica Leasing sent John Trenberth, President of Pana-Pacific, a copy of the letter
19 advising Airgas of their decision to discontinue accepting "Equipment Schedules" under the
20 Master Lease unless the assignment provision was removed. Upon receipt Mr. Trenberth called
21 Mr. Dan Salmons, Director, North American Sales, Delphi and informed Mr. Salmons of the letter
22 and its contents. Mr. Salmons offered no guidance or direction. Concurrently there were
23 installations of the TruckPC being performed in numerous locations around the country. These
24 installations were billed to GreatAmerica Leasing on May 31, 2005, and were not paid by
25 GreatAmerica Leasing. The total of the billings unpaid by GreatAmerica Leasing is \$180,144.34.
26 In addition, because GreatAmerica refused to pay the invoices The Brix Group, Inc. never billed
27 GreatAmerica for \$138,219.23 in installation costs paid to Velociti, the company specified by
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1 Delphi to install the TruckPCs in Airgas trucks, as they would have been rejected by
2 GreatAmerica Leasing. Thus, while The Brix Group has not been paid at least \$318,363.57 for
3 TruckPCs installed in Airgas trucks (Delphi's customer), installations performed at the direction
4 of Delphi, The Brix Group has confirmed in conversations with Mr. Randy Carlson, Delphi Proof
5 of Claims that Delphi did make payments to GreatAmerica Leasing when the lease was assigned
6 to Delphi by Airgas.

7 On October 8, 2005 Delphi Corporation filed for voluntary chapter 11 bankruptcy.

8 The Brix Group, Inc began hearing rumblings that the test being performed by Airgas, Inc.
9 was not going well. On December 9, 2005, a member of senior management at The Brix Group,
10 Inc. called Mr. Tuffy Baum, National Fleet Manager, Airgas to inquire as to the status of the "test"
11 in process. Mr. Baum informed The Brix Group that Airgas was in the process of removing all of
12 the TruckPCs from their trucks because Airgas had concluded that the test was a failure, the
13 TruckPC did not work. When The Brix Group, Inc. notified Delphi management that Airgas had
14 concluded that the test failed, Delphi said they would take back, under warranty, all of the
15 TruckPC units and give The Brix Group, Inc. full credit for the return of TruckPCs. (Note this
16 was for ALL of the TruckPC units not just those which had been installed in Airgas trucks.)
17 Delphi had obviously concluded the product did not work and agreed to issue warranty credit for
18 all TruckPCs returned to them. These credits were issued.

19 In December 2005, numerous discussions were held with Delphi management to discuss
20 the ongoing bankruptcy and the issues surrounding the fact that The Brix Group, Inc. had
21 purchased over \$2,000,000 in peripheral equipment to support the installation of TruckPCs in
22 Airgas trucks at the direction of Delphi management.

23 On January 17, 2006 a conference call was held between Beth Swarting, Vice President
24 Sales and Marketing, Delphi, Dan Salmons, Director North American Sales of Delphi and Harry
25 Brix, Chairman, David Tilton, Chief Financial Officer, of The Brix Group to discuss how to deal
26 with ongoing issues related to the TruckPC. Specifically, the issues of the peripheral equipment
27 inventory, which had absolutely no value except as a component of the TruckPC installation,
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1 outstanding amounts due from GreatAmerica Leasing and Velociti were discussed. During that
2 conference call Beth Swarting offered The Brix Group, Inc. 40% of the un-recovered cost of the
3 peripheral inventory, payments due from GreatAmerica Leasing, payments made to Velociti and
4 drop shipments made on behalf of Delphi to Volvo.

5 The Brix Group, Inc continued to have discussions with representatives from Delphi and
6 provided Delphi with copies of invoices, checks and inventory listings to support the amounts
7 claimed in The Brix Group, Inc's bankruptcy claim. All of the information was supplied to Ms.
8 Theresa Wyza, Customer Manager Delphi and to Mr. Randy Carlson, Delphi Proof of Claim
9 Group. Mr. Carlson, in writing, told David Tilton, Chief Financial Officer of The Brix Group,
10 Inc., that "I have all the paperwork I need". In addition, Delphi sent one of their engineers to The
11 Brix Group location in Fresno California to count and verify that all of the peripheral inventory
12 claimed was in fact still in the possession of The Brix Group. The engineer did in fact verify that
13 The Brix Group does have all of the worthless peripheral equipment claimed.

14 The Brix Group continued to believe that Delphi intended to negotiate the claim in good
15 faith. However, on May 25, 2007 The Brix Group, Inc received in the mail a "NOTICE OF
16 OBJECTION TO CLAIM". Upon receipt of that claim David Tilton, Chief Financial Officer, The
17 Brix Group called Mr. James Bretl, Delphi to discuss the "OBJECTION". Mr. Bretl said during
18 that conversation that he had spoken with Delphi management and that they felt really bad about
19 the situation and that they believed they had significant responsibility for what had happened.
20 However, they had been told by their lawyers they needed to accept or reject the claim in total and
21 that after the formal rejection they could negotiate a resolution with The Brix Group. Mr. Bretl
22 said that they believed they were at least 50% responsible.

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1 **II. CONCLUSION**

2 Based upon the foregoing and the supporting documentation attached to Claim No. 8139
3 and Claim No. 8220, The Brix Group, Inc. believes that: (1) Claim No. 8139 was properly filed in
4 the amount of \$44,754 and should not be subject to modification; and (2) Claim No. 8229 was
5 properly filed in the amount of \$2,896,591.72 and should not be subject to modification.
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7 DATED: June __, 2007

Respectfully submitted,
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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9
10 By: _____
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